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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL CURTIS  
COLEGROVE,

Defendant and Appellant.

2d Crim. No. B288245  
(Super. Ct. No. 2013010761)  
(Ventura County)

Daniel Curtis Colegrove appeals a judgment following conviction of lewd acts upon a child (five counts), and oral copulation of a person younger than 18 years old (three counts). (Pen. Code, §§ 288, subd. (c)(1), former 288a, subd. (b)(1), 801.1, subd. (a) [statute of limitations].)<sup>1</sup> We conclude that sufficient evidence supports the judgment and affirm.

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<sup>1</sup> All statutory references are to the Penal Code unless stated otherwise.

This appeal concerns sexual offenses that Colegrove committed against his teenage stepdaughter T. The sexual activity occurred over a period of six years, until T. graduated from high school and moved to Sacramento.<sup>2</sup> Following her complaints to law enforcement many years later, T. made a pretext telephone call to Colegrove. During the call, Colegrove made incriminating statements, including describing the sexual acts as a recommended treatment for T.'s alleged sexsomnia.<sup>3</sup> The telephone call was recorded and played at trial. Colegrove now appeals his conviction and asserts that no reasonable jury could have found T. a credible witness.

#### *FACTUAL AND PROCEDURAL HISTORY*

When T. was six years old, Colegrove married her mother L. and the family lived in Ventura. During the couple's eight-year marriage, they had two children together. When the couple divorced, T. was 14 years old. Following the divorce, Colegrove obtained custody of T. and his two children because L. suffered from longtime mental health and addiction problems.

At the time of trial, T. was 28 years old. She testified that when she was 12 years old, Colegrove ejaculated on her face as

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<sup>2</sup> The amended information charged sexual offenses committed between May 2003 and May 2007. T.'s testimony included offenses committed earlier.

<sup>3</sup> Sexsomnia, also known as sleep sex, is a form of parasomnia, characterized by an individual engaging in sexual acts while in non-rapid eye movement sleep. (Nat. Center for Biotechnology Information, *Sleep and Sex: What Can Go Wrong? A Review of the Literature on Sleep Related Disorders and Abnormal Sexual Behaviors and Experiences* (June 1, 2007) <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1978350>>.)

she slept. She awoke when he cleaned her face with a cloth. Colegrove explained to her that he was wiping drool from her mouth caused by her “night terrors.” This sexual activity occurred many times. When she was older, T. realized that the “drool” was dried ejaculate.

Shortly before his divorce from L., Colegrove informed T. that she was orally copulating him during her sleepwalking. He stated, “I can’t be having you on my dick like that.” Colegrove informed T. that a psychologist recommended that T. orally copulate him (Colegrove) while she was awake in order “to trick [her] subconscious mind.” On more than 50 occasions thereafter, T. orally copulated Colegrove. She complied with this “treatment” because she feared his physical abuse and the intervention of dependency authorities if she complained. T. had no memories of sleepwalking, however, and other family members did not corroborate Colegrove's statements.

Following L.’s departure from the residence, Colegrove engaged in sexual intercourse with T. approximately once a week. At times, he gave her alcohol or drugs prior to intercourse.

In 2004, the family and Colegrove’s now-girlfriend J. moved to a small apartment in Ventura. T. shared a bedroom with her step-siblings. T. testified that Colegrove would enter her bedroom and commit sexual acts with her at night. In addition, when J. was absent from the apartment, Colegrove engaged in sexual acts with T.

Colegrove also drove T. to other locations where she orally copulated him, e.g., his mechanics garage workplace and his parents’ home during their absence. Colegrove also used the excuse of T.’s driving lessons for further sexual activity. T.

testified that Colegrove's sexual acts with her continued shortly before her mother left until she graduated from high school.

After Colegrove married J., T. felt "out of the picture." Colegrove and J. subsequently had two children together. Following an argument with J., T., then 19 years old, moved to Sacramento to live with Colegrove's brother and his family. On one occasion, T. informed the brother in general terms that she had been molested.

In 2013, T. returned to Ventura to visit her step-siblings. When she noticed cut marks on her stepsister's arms, T. feared that her stepsister was being molested.<sup>4</sup> This fear prompted T. to report her own molestations to law enforcement. During a police interview, T. described Colegrove's various sexual acts, including a description of a mole on his penis. Following the interview, police officers arranged a recorded pretext telephone call between T. and Colegrove.

In the telephone call, Colegrove acknowledged that T. orally copulated him shortly before L. moved from the residence. The acts of oral copulation may have occurred for weeks or months, "dozens and dozens and dozens" of times. Colegrove stated that T. "instigated and initiated everything" during sleepwalking. Following L.'s move from the residence, "it was like no holds barred" with sexual activity. Colegrove explained that a psychologist-customer at his mechanics shop recommended that he "shock [her] out of [sleepwalking sexual behavior]." During the recorded call, Colegrove stated that he had been tested for sexually transmitted diseases and could not have

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<sup>4</sup> By the time of trial, T.'s stepsister and mother were deceased.

transmitted an infection to T. He added that he always wore a condom.

In a conversation with his brother two years prior to trial, Colegrove volunteered that he “didn’t fuck [T.]” He also stated that she was a brilliant person who “masterminded” the criminal prosecution against him.

Doctor Jody Ward, a forensic psychologist and expert witness regarding the psychological effects of sexual abuse upon children, testified that two-thirds of children do not report sexual abuse until they are adults. She opined that it is also common for children to forget sexual abuse or to combine common occurrences.

Colegrove testified at trial and denied that he molested T. He stated that T. had psychotic breaks, acted strangely, and would remove her clothing. Colegrove admitted that he attempted to treat her psychosis by giving her medication that he found in the home. He explained that he did so upon the advice of his psychologist-customer whose name he did not recall.

Colegrove testified that he agreed with the statements made by T. in the recorded pretext call so as not to upset her and to make her realize that she was psychotic. He explained that his statements were an effort to keep a "delusional," psychotic person engaged in conversation.

Colegrove presented character witnesses who vouched for his reputation for honesty. J. also testified that she usually awoke if Colegrove left their bed. She also stated that T.'s driving lessons were short and lasted only approximately 20 minutes. She testified that she did not witness any unusual or flirtatious behavior between T. and Colegrove.

Colegrove also presented evidence that his penis in a flaccid state did not have any moles. The photographic evidence was obtained shortly before trial, however, and not during the period in which Colegrove had a sexually transmitted disease. In addition, Colegrove testified that he did not have a mole on his penis.

The jury convicted Colegrove of five counts of lewd acts upon a child, and three counts of oral copulation of a person younger than 18 years old. (§§ 288, subd. (c)(1), former 288a, subd. (b)(1).) It also found that T. was younger than 18 years old at the time of the criminal acts and that the prosecution was commenced prior to her 28th birthday. (§ 801.1, subd. (a).) The trial court sentenced Colegrove to a prison term of seven years eight months, imposed an \$8,000 restitution fine, an \$8,000 parole revocation restitution fine (suspended), a \$320 court security assessment, and a \$240 criminal conviction assessment, and awarded Colegrove 172 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Colegrove appeals and contends that insufficient evidence supports the judgment thereby violating his state and federal constitutional rights.

### *DISCUSSION*

Colegrove challenges the sufficiency of evidence to support his conviction. He asserts that T.'s testimony was inconsistent, incredible, and inherently improbable, and that he presented evidence of his reputation for honesty and trustworthiness. Colegrove points to the inconsistencies in T.'s testimony regarding the dates of the sexual acts, which residence the acts occurred in, the sexual intercourse positions, the absence of a

mole on his penis, and the date of the sexual acts committed in Colegrove's parents' residence. He adds that the family apartment was small with common bedroom walls and that his wife arose from bed when he did. Colegrove prefers his explanation for his responses during the pretext telephone call, i.e., that he was "rid[ing] out the weird."

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 3 Cal.5th 1, 57; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*Johnson*, at p. 988.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60; *People v. Young* (2005) 34 Cal.4th 1149, 1181 ["Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact"].) We must accept logical inferences that the jury might have drawn from the evidence although we would have concluded otherwise. (*People v. Gomez* (2018) 6 Cal.5th 243, 278; *People v. Streeter* (2012) 54 Cal.4th 205, 241.) "If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*Albillar*, at p. 60.) Moreover, the testimony of a single witness is sufficient to prove a fact. (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.)

The sufficiency of evidence in a particular case depends upon the factual circumstances in that case. (*People v. Thomas*

(1992) 2 Cal.4th 489, 516.) A finding of sufficiency in one case does not suggest that weaker factual circumstances in another case will not support a conviction. (*Ibid.*) In our review, we focus upon the evidence that was presented, rather than evidence that might have been but that was not presented. (*People v. Story* (2009) 45 Cal.4th 1282, 1299.)

Sufficient evidence and all reasonable inferences therefrom support the conviction. T. testified that she orally copulated Colegrove when she was 14 years old, and then did so 50 times throughout the ensuing years. Following L.'s departure, Colegrove engaged in sexual intercourse with T. When the family was absent from the apartment, Colegrove would have intercourse with T. T. also testified that sexual acts occurred at Colegrove's workplace, or at his parents' home.

During the pretext telephone call, Colegrove admitted that he molested T. "dozens and dozens and dozens" of times, and that it was "no holds barred" when L. departed. He stated that he always wore a condom and acknowledged that he provided her with liquor and drugs. Colegrove justified this "treatment" of T.'s sexsomnia based upon the advice of a now-forgotten psychologist-customer. He also acknowledged that his actions were "grossly inappropriate," and that he felt "rotten" and "awful." Colegrove added that "if this gets out, everybody is done" because he would be imprisoned and his children placed in a foster home. The credibility of Colegrove's responses was the exclusive province of the trier of fact. We do not reassess witness credibility or reweigh the evidence. T.'s inconsistencies in details of her victimization do not render her testimony inherently improbable. (*People v. Mejia* (2007) 155 Cal.App.4th 86, 98-99.)



The judgment is affirmed.  
NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Charles W. Campbell, Jr., Judge

Superior Court County of Ventura

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